

Applicants elect, with traverse, Group I, Claims 1-19 and 37-38, for further prosecution.

Applicants note that claims of Groups V are directly dependent from the claims of Group I, as such these groups are not separable.

In regard to Groups I and V and Groups II-III and IV, the Office has characterized the relationship between these groups as product and process of use. Citing MPEP §806.05(h), the Office suggests that the claimed composition can be used in a materially different process such as recombinant production of the encoded protein and/or luxR peptides. However, the processes of Groups V is directly dependent from Group I, and as such can not be separated. Moreover, the Office has not provided reasons and/or examples to support this conclusion. Further, the Office has failed to show that the proposed process is materially different from the claimed process. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Regarding the remaining combination of Groups, the Office concludes that these groups are unrelated and/or patentably distinct. However, the Office merely states the conclusion without providing adequate reasons and/or examples to support this conclusion. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement and it should be withdrawn.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all claims would not constitute a serious burden on the Office.

Additionally, MPEP §821.04 states:

...if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Applicants respectfully submit that should the elected group be found allowable, the corresponding non-elected process claims should be rejoined.

For the reasons set forth above, Applicants contend that the Restriction Requirement is improper and should be withdrawn.

Applicants further submit that this application is now in condition for examination on the merits and an early notification to that effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



Norman F. Oblon  
Attorney of Record  
Registration No. 24,618

Vincent K. Shier, Ph.D.  
Registration No.: 50,552

(703) 413-3000  
Fax #: (703)413-2220  
NFO/VKS  
D:\203975US0X-RE resp.wpd



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